IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE V.RAMKUMAR

MONDAY, THE 2ND JULY 2007 / 11TH ASHADHA 1929

Crl.Rev.Pet.No. 149 of 2007(C)

AGAINST THE ORDER IN CMP 11624/06 IN CC.360/2003 of JUDL.MAGISTRATE OF FIRST CLASS COURT, OTTAPPALAM

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REVN. PETITIONER: ACCUSED

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1. RAJESH, S/O.UNNI @ NARAYANAN,
   AGED 30, KARUVATHODI VEEDU,
   CHERPULASSERY, PALAKKAD DISTRICT.

2. SURESH, S/O.UNNI @ NARAYANAN,
   AGED 30, KARUVATHODI VEEDU,
   CHERPULASSERY, PALAKKAD DISTRICT.

3. RAJESH, S/O.BALAN,
   AGED 20, PALLATHUVEEDU, MAPATUKARA,
   KULUKKALLUR, OTTAPALAM TALUK.

BY ADV. SRI.G.SREEKUMAR (CHELUR)

RESPONDENTS: COMPLAINANT

THE STATE OF KERALA, REPRESENTED
BY THE SUB INSPECTOR OF POLICE,
CHERPULASSERY THROUGH THE PUBLIC
PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.K.S. SIVAKUMAR

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 26-06-2007, THE COURT ON 02-07-2007 PASSED THE FOLLOWING:

V. RAMKUMAR, J.

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Crl. R.P. No. 149 of 2007

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Dated: 02-07-2007

ORDER

The revision petitioners who are accused Nos. 1 to 3 in C.C.No. 360 of 2003 on the file of the J.F.C.M., Ottappalam for offences punishable under Sections, 341, 323, 324, 326 and 506 (ii) read with Sec. 149 I.P.C. assail the order dated 18-12-2006 passed by the Magistrate allowing the petition filed by the prosecution for taking cognizance also for an offence punishable under Sec. 307 I.P.C.

2. The learned counsel appearing for the revision petitioner contended that the prosecution was really obliging the de facto complainant who is an abkari contractor having enmity towards the accused and that hitting with an iron rod cannot engender any apprehension of death so as to justify the belated invocation of Section 307 I.P.C.

3. I am afraid that I cannot agree with the above submissions. I perused the case diary records. The case of the prosecution is that at about 9 a.m. on 20-9-2003 the accused persons with the intention of causing the death of the de facto complainant (examined as P.W.1) took him forcibly to a godown in a jeep owned

by them and had assaulted him with iron rods causing injuries including head injuries. He was initially taken to Aswini Hospital, Ottappalam from where he was referred to Jubilee Mission Hospital, Thrissur and he was discharged only on 3-10-2003. He had lost his tooth and had sustained injuries on his face and eyes. It was after adverting to the testimony of P.W.1 that the learned Magistrate took cognizance of the offence punishable under Sec. 307 also since it was held to be an omission in the police charge. Whether the evidence in the case makes out an offence punishable under Sec. 307 I.P.C. is a different question which has to be considered after the conclusion of the trial. I am not inclined to accept the contention of the petitioners that the cognizance taken additionally for an offence punishable under Section 307 is illegal. After the inclusion of Sec. 307 I.P.C. the case has been re-numbered as C.P. 107 of 2006. It is hardly necessary for this court to observe that the case shall be committed to the court of Sessions without any further delay.

In the light of the forgoing discussion, I see no merit in this revision which is accordingly dismissed.

V. RAMKUMAR,
(JUDGE)

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